

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. FAA-2000-7402; Amendment No. 158-2]

RIN 2120-AH05

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends regulations pertaining to passenger facility charges (PFC's) to incorporate administrative and statutory changes in the procedures to establish PFC's based on recent enactments by Congress and records of decision by the FAA. This action is issued as a final rule without prior notice and comment because the changes are administrative and/or required by statute. Also the immediate adoption of these regulations is in the public interest and is necessary for public safety.

DATES: Effective June 29, 2000.

FOR FURTHER INFORMATION CONTACT: Eric Gabler, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone: (202) 267-3845.

SUPPLEMENTARY INFORMATION:

Final Rule Procedure

This final rule amends 14 CFR part 158 to incorporate administrative and statutory changes to the PFC program. The FAA has determined that this action can be issued as a final rule without prior public notice and comment because the amendments are rules of agency procedure required by statute. Further, the FAA has found prior public notice and comment on this action is contrary to the public interest. The PFC's approved pursuant to this action are needed without delay to provide funds for public safety projects, security projects, and other projects of public benefit.

While this rule is effective 30 days after publication, applications for PFC authority may be submitted immediately. Also, the FAA anticipates issuing guidance to assist public agencies applying for authority to impose PFC's.

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone (703) 321-3339), and/or the Government Printing Office's electronic bulletin board service (telephone (202) 512-1661).

Internet users may access recently published rulemaking documents through the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the Government Printing Office's web page at <http://www.access.gpo.gov/nara>.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence

Avenue, SW, Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The PFC program was established by the Aviation Safety and Capacity Expansion Act of 1990. The Act was enacted on November 5, 1990 and is codified at 49 U.S.C. 40117. On May 29, 1991, the Department of Transportation adopted new regulations to establish the PFC program, under which the FAA Administrator, under authority delegated by the Secretary of Transportation, could authorize a public agency to impose a PFC of \$1, \$2, or \$3 per enplaned passenger at a commercial service airport the public agency controls. The proceeds from such PFC's are to be used to finance FAA-approved eligible airport-related projects that preserve or enhance safety, security, or capacity of the national airport system; reduce noise from an airport that is part of such system; or furnish opportunities for enhanced competition between or among air carriers. The rule, which added a new part 158, became effective on June 28, 1991. As of March 1, 2000, 825 PFC applications had been approved or partially approved for 314 airport locations, with all but one airport location collecting at the \$3 PFC level.

On April 5, 2000, President Clinton signed into law the "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" (AIR 21). This law made several

modifications to the PFC program, including allowing a public agency to apply to the FAA to increase the PFC level that it may charge to \$4 or \$4.50.

These changes, as well as those administrative and statutory changes required by the Federal Aviation Administration Authorization Act of 1994 (1994 Act), the Federal Aviation Reauthorization Act of 1996 (1996 Act), and the recodification of the Federal Aviation Act of 1958 are adopted in part 158 by this action.

Section By Section Analysis

Subpart A General

§ 158.3 Definitions. The following definitions are added or revised:

Allowable cost. Prior to April 5, 2000, allowable cost was defined to include only those costs incurred on or after November 5, 1990. AIR 21 expands this definition to include costs of terminal development referred to in § 158.15(b)(3) but incurred after August 1, 1986, provided the development is at an airport smaller than a medium hub airport and the total passenger boardings at that airport declined by at least 16 percent between calendar year 1989 and calendar year 1997.

Commercial service airport This section is amended by removing the citation “49 U.S.C. app. 2202(17).”

Covered airport Before PFC’s are approved for collection, AIR 21 requires a “covered airport” to file a competition plan. AIR 21 defines “covered airport” as a medium or large hub airport at which one or two air carriers control more than 50 percent of the passenger boardings.

Frequent flier award coupon The 1994 Act prohibits collection of a PFC from a passenger who obtained the ticket for air transportation with a frequent flier award coupon.

Frequent flier award coupon means a zero-fare award of air transportation provided by an air carrier to a passenger in exchange for accumulated travel mileage credits in a customer loyalty program, but does not include the redemption of accumulated credits for additional or upgraded service on trips for which the passenger has paid a published fare.

“Two-for-the-price-of-one” and similar marketing programs, and air transportation purchased for the passenger by other parties are not included in the definition. Since 1994, the FAA has incorporated the definition of frequent flier award coupon in its individual PFC records of decision.

Medium or large hub airport. Since the enactment of the PFC program, there have been additional conditions on approval of PFC’s at commercial service airports if the airports have more than 0.25 percent of the total number of passenger boardings at all such airports in the U.S. for the prior calendar year. The FAA consistently has referred to such an airport with more than 0.25 percent and up to 1 percent of the total number of passenger boardings to be a “medium hub” airport, and an airport with more than 1 percent of the total number of passenger boardings to be a “large hub” airport. The FAA is replacing references to an airport with more than 0.25 percent of commercial service enplanments in the regulation with the term “medium or large hub.”

Nonrevenue Passenger The 1994 Act prohibits collection of a PFC from a nonrevenue passenger. Nonrevenue passenger means a passenger receiving air transportation from an air carrier for which remuneration is not received by the air carrier. Air carrier employees or others receiving air transportation, for which token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charges

also are considered nonrevenue passengers. Since 1994, the FAA has incorporated the definition of nonrevenue passenger in its individual PFC records of decision.

Public agency This definition has been expanded to allow a private sponsor of an airport participating in the Pilot Program for Private Airport Ownership to apply for PFC authority under the terms and conditions that apply to a public agency. The Pilot Program on Private Ownership of Airports was established by Congress in 1996 and directs the FAA to allow program participants to apply for PFC authority.

§ 158.5 Authority to impose PFC's. The FAA is amending this section to include PFC levels of \$4 and \$4.50, as authorized by AIR 21, in addition to the pre-existing levels of \$1, \$2, and \$3.

§ 158.7 Exclusivity of authority. AIR 21 clarifies and strengthens the independent status of a public agency's PFC authority relative to State or other political subdivisions. This section is amended in accordance with the specific terms of AIR 21.

§ 158.9 Limitations. The following statutory limitations are added to the previously-listed prohibitions: (1) collection of a PFC from nonrevenue passengers; (2) collection of a PFC from a passenger who obtained the ticket for air transportation with a frequent flier award coupon; (3) imposition of a fee on passengers on flights, including flight segments, between 2 or more points in Hawaii; or (4) imposition of a fee on passengers on an aircraft having a seating capacity of less than 60 passengers in Alaska.

§ 158.11 Public agency request not to require collection of PFC's by a class of air carriers or foreign air carriers or for service to isolated communities. This section is amended to include new provisions of AIR 21 that allow a public agency to request that certain classes or categories of air transportation not collect the PFC. These provisions

include passengers enplaned on a flight to an airport receiving scheduled passenger service and having fewer than 2,500 passenger boardings each year; and to an airport in a community that has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State. The public agency may request any or all of these exclusions.

§ 158.15 Project eligibility at PFC levels of \$1, \$2, or \$3. This section is revised to explicitly include the 1994 statutory requirement that all proposed projects be adequately justified to receive PFC funding—a standard the FAA has been applying since the implementation of part 158 in 1991 in PFC records of decision. Also, AIR 21 makes other revisions necessary in this section. AIR 21 creates a special category of project eligibility for terminal development work associated with construction of gates and related areas if the project will enable additional air service by an air carrier with less than 50 percent of annual passenger boardings at an airport.

§ 158.17 Project eligibility at PFC levels of \$4 or \$4.50. Section 158.17 is added to provide eligibility requirements for PFC's at the \$4 or \$4.50 level. Applicants requesting authority to impose PFC's at the \$4 or \$4.50 level must meet these eligibility requirements in addition to those in section § 158.15.

AIR 21 allows a project to be funded at a \$4 or \$4.50 PFC level if the project cannot be paid for from funds reasonably expected to be available through programs referred to in 49 U.S.C. 48103 (the Airport Improvement Program (AIP)).

Section 158.17 also incorporates the statutory provision that conditions funding of a surface transportation or terminal project at the \$4 or \$4.50 level on a finding that the public agency has made adequate provision for financing the airside needs of the airport,

including runways, taxiways, aprons, and aircraft gates. The FAA will use financial and planning data, information in the PFC application, and information on funding availability under AIP, to determine eligibility.

Also, AIR 21 establishes an additional requirement for projects at medium and large hub airports. In particular, a project for a medium or large airport is eligible for PFC funding at levels of \$4 or \$4.50, only if the project will make a significant contribution to: improving air safety and security; increasing competition among air carriers; reducing current or anticipated congestion; or reducing the impact of aviation noise on people living near the airport.

The FAA will develop specific criteria for the “significant contribution” requirement through individual PFC records of decision. As with prior records of decision, the FAA will consider all relevant factors, including but not limited to the following in assessing whether the significant contribution requirement has been met:

Safety and security—Does the project advance airport security and/or safety? Projects that address security and safety requirements of 14 CFR part 107 and part 139, respectively, are usually given highest priority for AIP discretionary funds

Capacity—Does the project support or is it part of a capacity project to which the FAA has allocated Federal resources or that would qualify for such resources? For example, is the project included in an AIP letter of intent or does it satisfy the FAA’s benefit-cost criteria for large AIP discretionary investments? Has the project been identified in an FAA Airport Capacity Enhancement Plan? Does the project alleviate a constraint on airport growth or service?

Noise—Does the project affect the noise-impacted areas around the airport?

Historically, projects addressing noisier areas than projects that would address less noisy areas, all other factors being equal, have been given higher priority for AIP discretionary grants.

Competition—Does the project mitigate or remove barriers to increased airline competition at the airport (e.g., cause an increase in common use gates at a gate-constrained airport)? Has the project been identified as an essential component in the airport's competition plan or other similar documents submitted to the FAA?

§ 158.19 Requirement for competition plans. A new section has been added to implement a requirement to develop a competition plan. Under AIR 21, no public agency controlling a covered airport, defined as a medium or large hub airport at which one or two air carriers account for more than 50 percent of the passenger boardings, may impose a PFC unless the public agency has submitted a competition plan to the FAA. AIR 21 requires that each plan meet statutory requirements and that the plan must be reviewed periodically to ensure successful implementation. The requirement to develop a plan does not apply to PFC authority in effect before April 5, 2000.

Covered airports are required to submit competition plans to receive new AIP grants in FY 2001 and thereafter. Because there are more covered airports under the AIP than there are participating in the PFC program, and because AIP grants are issued on an annual basis, instructions for such plans are provided under the AIP. Such plans prepared for AIP may be used for PFC projects.

Subpart B--Application and Approval

§ 158.23 Consultation with air carriers and foreign air carriers. The requirement under § 158.23(a)(2) that a public agency consult with its air carriers and foreign air carriers on “the PFC level” is amended to read “the PFC level for each project...” The FAA anticipates that PFC applications may include several projects qualifying at different PFC levels, depending on the contribution of each project.

§ 158.25 Applications. This section is amended to allow for processing competition plans required by § 158.19 and determination of the PFC level for each project required in revised § 158.23.

§ 158.29 The Administrator’s decision. Section 158.29 is amended to require all projects approved for collection of PFC’s to meet the requirements of § 158.15. In addition, projects approved for collection of a PFC at a level of more than \$3 must meet the requirements of § 158.17. Previously, paragraphs (a)(1)(ii), (a)(1)(iii), (b)(1)(ii) and (b)(1)(iii) referenced separate components of § 158.15.

Under the 1994 Act, the FAA is prohibited from approving a PFC application if an airport is not in compliance with 49 U.S.C. 47107(b) governing the use of airport revenues. The FAA includes a determination that the public agency has not been found in violation of

49 U.S.C. 47107(b) in its PFC records of decision. Section 158.29 is amended to reflect this requirement.

A new paragraph is added to § 158.29 to acknowledge that, if applicable, the public agency must submit a competition plan.

Section 158.29 also is amended to require the Administrator to specify a PFC level “for the application,” and total approved PFC revenue “including the amounts approved at \$3 and less, \$4, and/or \$4.50.” The FAA anticipates that PFC applications may include various projects, some qualifying at a level of \$3 or less, and others at \$4 or \$4.50. The public has the opportunity to comment on the PFC levels for these projects in the notice and comment process provided in § 158.27(e)

§ 158.31 Duration of authority to impose a PFC after project implementation.

Section 158.31 is amended to remove the words “section of 9304(c) or 9703 of the Airport Noise and Capacity Act of 1990 (Pub. L. 101-508, Title IX, subtitle D.”

§ 158.37 Amendment of approved PFC. Section 158.37(b) is amended to reflect the new requirements of §§ 158.17 and 158.19 to obtain authority to increase a previously approved PFC level to \$4 or \$4.50.

Subpart C--Collection, Handling, and Remittance of PFC's

§ 158.45 Collection of PFC's on tickets issued in the U.S. AIR 21 adds several new classes of passengers from whom a PFC may not be collected and this section is revised accordingly.

§ 158.49 Handling of PFC's. The 1996 Act included a provision clarifying that PFC's held by air carriers after collection constitute a trust fund held for the beneficial interest of public agencies. Section 158.49 is amended in accordance with the specific terms of this provision.

Subpart D--Reporting, Recordkeeping and Audits

§ 158.63 Reporting requirements: Public agency. Section 158.63 is amended to require the public agency to indicate the PFC level the FAA approved for each project as authorized by AIR 21. In addition, the phrase "medium or large hub airports" replaces the phrase "airports enplaning 0.25 percent or more of the total annual enplanements in the U.S. for the prior calendar year as determined by the Administrator" (see discussion pertaining to new definitions in § 158.3).

Subpart F--Reduction in Airport Improvement Program Apportionment

§ 158.93 Public agencies subject to reduction. Section 158.93 is amended to substitute the phrase "medium or large hub" in place of "enplanes 0.25 percent or more of the total annual enplanements in the U.S." (see discussion pertaining to new definitions in § 158.3).

§ 158.95 Implementation of reduction. This section is amended to reflect AIR 21 requirement that the effective date of AIP apportionment reduction is changed to "the first fiscal year following the year in which the collection of the fee imposed under § 40117 is begun." Also, AIR 21 establishes separate reduction levels for airports depending on the level of PFC imposed. Specifically, in the case of a PFC level of \$3 or less, the reduction is maintained at the previous level of 50 percent of the projected revenues from the PFC in the fiscal year but not more than 50 percent of the amount of AIP formula monies that otherwise would be apportioned. However, in the case of a PFC level of more than \$3, the

reduction is set at 75 percent of the projected revenues from the PFC in the fiscal year but not more than 75 percent of the amount of AIP formula monies that otherwise would be apportioned. Section 158.95 is amended to reflect these statutory provisions. This means, in the case of an airport raising its PFC level from \$3 to more than \$3, the higher reduction of apportionments would take place in the first fiscal year following the year in which the collection of the PFC level of more than \$3 is begun.

§ 158.97 Special rule for transitioning airports. AIR 21 provides that certain small hub airports transitioning to medium hub airport status are protected through FY 2003 against a loss in combined year-to-year AIP apportionment and PFC revenues caused by entitlement reductions under 49 U.S.C. 47114(f) (the amended § 158.95). Accordingly, a new section § 158.97 is added in accordance with this statutory requirement. This provision applies to FY 2000 through FY 2003.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreement Act of 1979 directs agencies to assess the effect of regulatory changes on international trade. Fourth, Public Law 104-4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector. In conducting these analyses, the FAA has determined this final rule is not a “significant regulatory action” under section 3 (f) of Executive Order 12866 and, therefore, is not subject to review by the

Office of Management and Budget. This final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This final rule would not have a significant impact on a substantial number of small entities. In addition, this rule would not constitute a barrier to international trade. Finally, the FAA has determined that the proposal would not impose a federal mandate on state, local, or tribal governments, or the private sector of \$100 million per year.

Benefit – Cost Analysis

This final rule amends part 158 to be consistent with current statutes governing the PFC program. These new statutory provisions will enable airport authorities to increase the PFC in order to collect more funds for enhancing the safety, security and capacity of their facilities; reducing noise in nearby communities; and enhancing airline competition to the benefit of air travelers. The FAA estimates that up to \$750 million annually in PFC funds will be made available to airports to make these improvements. As a result of the higher percentage of returned AIP apportioned funds attributable to these higher PFC collections, an additional \$72 million in AIP funding could be available to small airports by FY 2002. Under the provisions of the statute, this amount would be almost doubled through FY 2003 if AIP funds are appropriated at \$3.2 billion or more. Some air travelers will incur a small increase (1-2 percent) in the cost of their ticket to obtain these benefits although over the long run these passengers will receive compensating benefits from improved infrastructure financed with the higher PFC funds. These costs reflect the voluntary action of airports and are not required either by statute or the current amendment to the rule. The costs of

implementing the mandated changes in the PFC program application and administrative procedures are costs attributable to the statute and are not costs of this rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa.htm> and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Paperwork Reduction Act

Information collection requirements in the amendment to part 158 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120-0557. Some relatively minor requirements for information collections are associated with this amendment, and these are required by AIR 21. The additional paperwork submission requirements will not become mandatory until FAA provides for notice and comment, and the changes are submitted to OMB for review and approval.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The

FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

All costs are fully recoverable through the PFC, if approved. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant impact on a substantial number of small entities.

International Trade

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential affect of this final rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

Executive Order 13132, Federalism.

The FAA has analyzed this action under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the

States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this action does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) codified in 2 U.S.C. 1501-1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed “significant intergovernmental mandate.” A “significant intergovernmental mandate” under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain a Federal intergovernmental or private sector mandate that exceeds \$100 million a year. While PFC collections are likely to increase by at least \$100 million per year, the cause of that impact is not the rule but the statute that permits the increase in the maximum PFC level. The increase will be triggered by the decisions of individual public agencies to seek the increase and not by any action of the federal government. If a project meets the statutory criteria for approval, the FAA must approve the project. Moreover, any increase costs associated with obtaining approval to impose the higher fee are fully recoverable through PFC funding.

Environmental Analysis

The FAA concludes that issuance of this final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. The potential environmental effects of any project funded with PFC revenues are already addressed under § 158.29(b)(1)(iv), which requires all applicable requirements pertaining to the National Environmental Policy Act of 1969 (NEPA) to be satisfied before the Administrator may approve the project to use PFC funds. A copy of this assessment has been placed in the docket.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94-163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 158

Air carriers, Airports, Passenger facility charge, Public agencies, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 158 of Title 14 of the Code of Federal Regulations as follows:

PART 158--PASSENGER FACILITY CHARGES (PFC'S)

1. The authority citation for part 158 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40116-40117, 47106, 47111, 47114-47116, 47524, 47526.

2. Revise § 158.1 to read as follows:

§ 158.1 Applicability.

This part applies to passenger facility charges (PFC's) as may be approved by the Administrator of the Federal Aviation Administration (FAA) and imposed by a public agency that controls a commercial service airport. This part also describes the procedures for reducing funds to a large or medium hub airport that imposes a PFC.

3. Amend § 158.3 as follows:

- a. Amend the definition of Allowable cost by adding a new sentence at the end of the definition.
- b. Revise the definitions of Commercial service airport, and Public agency;
- c. Add definitions of Covered airport, Frequent flyer award coupon, Medium or large hub airport, and Nonrevenue passenger, in alphabetical order.

The revisions and additions read as follows:

§ 158.3 Definitions.

* * * * *

Allowable cost * * * Costs of terminal development incurred after August 1, 1986, at an airport that did not have more than .25 percent of the total annual passenger boardings in the U.S. in the most recent calendar year for which data is available and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997 are allowable.

* * * * *

Commercial service airport means a public airport that annually enplanes 2,500 or more passengers and receives scheduled passenger service of aircraft.

Covered airport means a medium or large hub airport at which one or two air carriers control more than 50 percent of passenger boardings.

* * * * *

Frequent flier award coupon means a zero-fare award of air transportation that an air carrier or foreign air carrier provides to a passenger in exchange for accumulated travel mileage credits in a customer loyalty program, whether or not the term “frequent flier” is used in the definition of that program. The definition of “frequent flier award coupon” does not extend to redemption of accumulated credits for awards of additional or upgraded service on trips for which the passenger has paid a published fare, “two-for-the-price-of-one” and similar marketing programs, or to air transportation purchased for a passenger by other parties.

* * * * *

Medium or large hub airport means a commercial service airport that has more than 0.25 percent of the total number of passenger boardings at all such airports in the U.S. for the prior calendar year, as determined by the Administrator.

Nonrevenue passenger means a passenger receiving air transportation from an air carrier or foreign air carrier for which remuneration is not received by the air carrier or foreign air carrier as defined under Department of Transportation Regulations or as otherwise determined by the Administrator. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are also considered nonrevenue passengers.

* * * * *

Public agency means a State or any agency of one or more States; a municipality or other political subdivision of a State; an authority created by Federal, State or local law; a tax-supported organization; an Indian tribe or pueblo that controls a commercial service airport; or for the purposes of this part, a private sponsor of an airport approved to participate in the Pilot Program on Private Ownership of Airports.

* * * * *

4. Amend § 158.5 by revising the first sentence to read as follows:

§ 158.5 Authority to impose PFC's.

Subject to the provisions of this part, the Administrator may grant authority to a public agency that controls a commercial service airport to impose a PFC of \$1, \$2, \$3, \$4, or \$4.50 on passengers enplaned at such an airport. * * *

5. Amend § 158.7 by revising paragraph (a) to read as follows:

§ 158.7 Exclusivity of authority.

(a) A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible public agency may not tax, regulate, prohibit, or otherwise attempt to control in any manner the imposition or collection of a PFC or the use of PFC revenue.

* * * * *

6. Amend § 158.9 by revising paragraph (a) to read as follows:

§ 158.9 Limitations.

(a) No public agency may impose a PFC on any passenger—

(1) For more than 2 boardings on a one-way trip or in each direction of a round trip;

(2) On any flight to an eligible point on an air carrier that receives essential air service compensation on that route. The Administrator makes available a list of carriers and eligible routes determined by the Department of Transportation for which PFC's may not be imposed under this section;

(3) Who is a nonrevenue passenger or obtained the ticket for air transportation with a frequent flier award coupon;

(4) On flights, including flight segments, between 2 or more points in Hawaii; or

(5) In Alaska aboard an aircraft having a certificated seating capacity of less than 60 passengers.

* * * * *

7. Revise § 158.11 to read as follows:

§ 158.11 Public agency request not to require collection of PFC's by a class of air carriers or foreign air carriers or for service to isolated communities.

(a) Subject to the requirements of this part, a public agency may request that collection of PFC's not be required for—

(1) Passengers enplaned by any class of air carrier or foreign air carrier if the number of passengers enplaned by the carriers in the class constitutes not more than one percent of the total number of passengers enplaned annually at the airport at which the fee is imposed; or

(2) Passengers enplaned on a flight to an airport—

(i) That has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or

(ii) In a community that has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

(b) The public agency may request this exclusion authority under paragraph (a)(1) or (a)(2) of this section or both.

8. Amend § 158.15 by revising the section heading, by revising paragraphs (b) introductory text and (b)(1) through (b)(5), and by adding a new sentence to the end of paragraph (b)(6), and by adding new paragraph (c) to read as follows:

§ 158.15 Project eligibility at PFC levels of \$1, \$2, or \$3.

* * * * *

(b) Eligible projects are any of the following projects—

(1) Airport development eligible under subchapter I of chapter 471 of 49 U.S.C.;

(2) Airport planning eligible under subchapter I of chapter 471 of 49 U.S.C.;

(3) Terminal development as described in 49 U.S.C. 47110(d);

(4) Airport noise compatibility planning as described in 49 U.S.C. 47505;

(5) Noise compatibility measures eligible for Federal assistance under 49 U.S.C. 47504, without regard to whether the measures have been approved pursuant to 49 U.S.C. 47504; or

(6)* * * In the case of a project required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport, a project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door, and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate.

(c) An eligible project must be adequately justified to qualify for PFC funding.

9. Add § 158.17 to Subpart A to read as follows:

§ 158.17 Project eligibility at PFC levels of \$4 or \$4.50.

(a) A project for any airport is eligible for PFC funding at levels of \$4 or \$4.50 if—

(1) The project meets the eligibility requirements of § 158.15;

(2) The project costs requested for collection at \$4 or \$4.50 cannot be paid for from funds reasonably expected to be available for the programs referred to in 49 U.S.C. 48103; and

(3) In the case of a surface transportation or terminal project, the public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.

(b) In addition, a project for a medium or large airport is only eligible for PFC funding at levels of \$4 or \$4.50 if the project will make a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport.

10. Add § 158.19 to Subpart A to read as follows:

§ 158.19 Requirement for competition plans.

(a) Beginning in fiscal year 2001, no public agency may impose a PFC with respect to a covered airport unless the public agency has submitted a written competition plan. This requirement does not apply to PFC authority approved prior to April 5, 2000.

(b) The Administrator will review any plan submitted under paragraph (a) of this section to ensure that it meets the requirements of 49 U.S.C. 47106(f) and periodically will review its implementation to ensure that each covered airport successfully implements its plan.

11. Amend § 158.23 by revising paragraph (a)(2) to read as follows:

§ 158.23 Consultation with air carriers and foreign air carriers.

(a) * * *

(2) The PFC level for each project, the proposed charge effective date, the estimated charge expiration date, and the estimated total PFC revenue;

* * * * *

12. Amend § 158.25 by revising paragraphs (b)(7) and (b)(8) to read as follows:

§ 158.25 Applications.

* * * * *

(b) * * *

(7) The project justification, including the extent to which the project achieves one or more of the objectives set forth in § 158.15(a) and (if a PFC level above \$3 is requested) the requirements of § 158.17. In addition—

(i) For any project for terminal development, including gates and related areas, the public agency shall discuss any existing conditions that limit competition between and among air carriers and foreign air carriers at the airport, any initiatives it proposes to foster opportunities for enhanced competition between and among such carriers, and the expected results of such initiatives; or

(ii) For any terminal development project at a covered airport, the public agency shall submit a competition plan in accordance with § 158.19.

(8) The charge to be imposed for each project.

* * * * *

13. Amend § 158.29 by revising paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (a)(1)(vi), (a)(2), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv) and (b)(2) and by adding paragraphs (a)(1)(vii) and (a)(1)(viii) to read as follows:

§ 158.29 The Administrator's decision.

(a) * * *

(1) * * *

(ii) The project will achieve the objectives and criteria set forth in § 158.15;

(iii) If a PFC level above \$3 is being approved, the project meets the criteria set forth in § 158.17;

* * * * *

(v) The public agency has not been found to be in violation of 49 U.S.C. 47524 and 47526;

(vi) The public agency has not been found to be in violation of 49 U.S.C. 47107(b) governing the use of airport revenue;

(vii) If the public agency has not applied for authority to use PFC revenue, a finding that there are alternative uses of the PFC revenue to ensure that such revenue will be used on approved projects; and

(viii) If applicable, the public agency has submitted a competition plan in accordance with § 158.19.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the projects and alternative uses that may qualify for PFC financing under § 158.15, and (if a PFC level above \$3 is being approved) § 158.17, PFC level, total approved PFC revenue including the amounts approved at \$3 and less, \$4, and/or \$4.50, duration of authority to impose and earliest permissible charge effective date.

(b) * * *

(1) * * *

(ii) The project will achieve the objectives and criteria set forth in § 158.15;

(iii) If a PFC level above \$3 is being approved, the project meets the criteria set forth in § 158.17; and

(iv) All applicable requirements pertaining to the ALP for the airport, airspace studies for the project, and the National Environmental Policy Act of 1969 (NEPA), have been satisfied.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the approved projects, PFC level, total approved PFC revenue, total approved for collection, including the amounts approved at \$3 and less, \$4, and/or \$4.50, and any limit on the duration of authority to impose a PFC as prescribed under § 158.33.

* * * * *

14. In § 158.31(d), remove the words “section 9304(e) or 9703 of the Airport Noise and Capacity Act of 1990 (Pub. L. 101-508, Title IX, subtitle D)” and add, in their place, the words “ 49 U.S.C. 47524 and 47526”.

15. Amend § 158.37 by revising paragraph (b)(1) and adding three sentences at the end of paragraph (b)(2) to read as follows:

§ 158.37 Amendment of approved PFC.

* * * * *

(b) * * *

(1) With the exception of a change in PFC level to more than \$3 or an amendment of a PFC that is subject to a competition plan under § 158.19, in the event of no carrier disagreement with a change proposed under this paragraph (b), the public agency may institute the proposed amendment unless, within 30 days after providing the notification required under this paragraph (b), it is notified otherwise by the Administrator.

(i) If a PFC level of more than \$3 is requested, the Administrator notifies the public agency that the conditions of § 158.17 have been met before the higher level can be instituted.

(ii) If a PFC amendment that is subject to the competition plan requirement is submitted, the Administrator notifies the public agency that the plan satisfies the requirements of § 158.19.

(iii) The public agency shall notify the carriers of the effective date of any change to the approved PFC resulting from the amendment, subject to the limitation that the effective date of any new charge shall be no earlier than the first day of a month which is at least 60 days from the time the public agency notifies the carriers.

(2) * * * If a PFC level of more than \$3 is requested, the Administrator must find that the conditions of § 158.17, and § 158.19 if applicable, have been met before that PFC level can be instituted. If the amendment is approved, the Administrator advises the public agency and notification to the carriers will be as provided under paragraph (b)(1) of this section. The notification to the carrier includes any findings required by § 158.17 or § 158.19.

16. Amend § 158.45 by revising paragraph (d) to read as follows:

§ 158.45 Collection of PFC's on tickets issued in the U.S.

* * * * *

(d) In addition to the restriction in paragraph (c) of this section, issuing carriers and their agents shall not collect PFC's from a passenger covered by any of the other limitations described in § 158.9(a).

* * * * *

17. Amend § 158.49 by revising paragraph (b) to read as follows:

§ 158.49 Handling of PFC's.

* * * * *

(b) PFC revenue must be accounted for separately by collecting carriers, but the revenue may be commingled with the carrier's other sources of revenue. The PFC revenues that are held by an air carrier or an agent of the carrier after collection of a PFC constitute a trust fund that is held by the air carrier or agent for the beneficial interest of the public agency imposing the PFC. Such carrier or agent holds neither legal nor equitable interest in the PFC revenues except for any handling fee or retention of interest collected on unremitted proceeds as authorized in § 158.53.

* * * * *

18. Amend § 158.63 by revising paragraphs (a) and (c) to read as follows:

§ 158.63 Reporting requirements: Public agency.

(a) The public agency shall provide quarterly reports to carriers collecting PFC's for the public agency with a copy to the appropriate FAA Airports office. The quarterly report shall include PFC revenue received from collecting carriers, interest earned, and expenditures for the quarter; cumulative PFC revenue received, interest earned, expenditures, and the amount committed for use on currently approved projects, including the quarter; the PFC level for each project; and the current project schedule.

* * * * *

(c) For medium or large hub airports, the public agency must provide the FAA, by August 1 of each year, an estimate of PFC revenue to be collected for each such airport in the ensuing fiscal year.

§§ 158.71, 158.81, and 158.83 [Amended]

19. Remove the words “section 1113(e) of the Federal Aviation Act” and add, in their place, the words “49 U.S.C. 40117” in the following places:

- a. § 158.71(a) and (b);
- b. § 158.81; and
- c. § 158.83.

20. In § 158.87, in paragraph (a) remove the words “section 507 of the AAIA of 1982, 49 U.S.C. App. 2206” and add, in their place, the words “49 U.S.C 47114”; and, in paragraph (c) remove the words “49 U.S.C. App. 2218” and add, in their place, the words “49 U.S.C. 47111(d)”.

21. In § 158.93 introductory text, remove the words “section 507(a)(1) of the Airport and Airway Improvement Act of 1982” and add, in their place, the words “49 U.S.C. 47114”.

22. Section 158.95 is amended by revising paragraphs (a) and (b) to read as follows:

§ 158.95 Implementation of reduction.

(a) A reduction in apportioned funds will not take effect until the first fiscal year following the year in which the collection of the PFC is begun and will be applied in each succeeding fiscal year in which the public agency imposes the PFC.

(b) The reduction in apportioned funds is calculated at the beginning of each fiscal year and shall be an amount equal to—

(1) In the case of a fee of \$3 or less, 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section; and

(2) In the case of a fee of more than \$3, 75 percent of the projected revenues from the fee in the fiscal year but not by more than 75 percent of the amount that otherwise would be apportioned under this section.

* * * * *

23. Add § 158.97 to Subpart F to read as follows:

§ 158.97 Special rule for transitioning airports.

(a) Beginning with the fiscal year following the first calendar year in which an airport has more than .25 percent of the total number of boardings in the U.S., the sum of the amount that would be apportioned under 49 U.S.C. 47114 to the public agency controlling that airport in a fiscal year, after application of § 158.95, and the projected PFC revenues to be collected in such fiscal year, shall not be less than the sum of the apportionment to such airport for the preceding fiscal year and the PFC revenues collected in the preceding fiscal year.

(b) Paragraph (a) of this section shall apply for fiscal years 2000 through 2003.

24. In Appendix A to part 158, in paragraph A.2 remove the words “the Aviation Safety and Capacity Expansion Act of 1990” and add, in their place, the words “49 U.S.C. 40117”; and in paragraph B.12 remove the words “sections 9304 and 9307 of the Airport Noise and Capacity Act of 1990” and add, in their place, the words “49 U.S.C. 47524 and 47526”.

Issued in Washington, DC on May 23, 2000.

/S/ Jane F. Garvey
Administrator